

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mic Braun	Team: Squad #05	CCRB Case #: 202207878	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/09/2022 8:33 PM	Location of Incident: 14th Street - Union Square subway station	18 Mo. SOL 5/9/2024	Precinct: 13
Date/Time CV Reported Thu, 11/10/2022 5:50 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Thu, 11/17/2022 10:22 AM

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. PO Eroll Cherenfant	10720	955812	TD 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Nadira Fayzimatova	05676	970512	TD 4
2. PO Carmelo Colon	07470	967457	TD 4
3. PO Jorge Castaneda	27526	971862	TD 4

Officer(s)	Allegation	Investigator Recommendation
A . PO Eroll Cherenfant	Force: Police Officer Eroll Cherenfant used physical force against an individual.	[REDACTED]
B . PO Eroll Cherenfant	Discourtesy: Police Officer Eroll Cherenfant spoke discourteously to an individual.	[REDACTED]

Case Summary

On November 10, 2022, Lt. Gaspard of Transit Bureau Investigations filed this complaint with IAB on behalf of an unidentified individual, generating original log § 87(2)(b). The CCRB received this complaint on November 17, 2022.

On November 9, 2022, at approximately 8:33 p.m., at the 14th Street – Union Square subway station in Manhattan, PO Eroll Cherenfant, PO Nadira Fayzimatova, PO Carmelo Colon, and PO Jorge Castaneda, all of Transit District 4, apprehended an unidentified man with the surname § 87(2)(b) on the subway platform in order to eject him from the station and transport him to a hospital. An unidentified male bystander began speaking to the officers and ultimately followed them up to the mezzanine level. PO Cherenfant pushed the unidentified victim to the ground (**Allegation A: Force**, § 87(2)(g)). PO Cherenfant used the word “fuck” multiple times while speaking to the unidentified victim (**Allegation B: Discourtesy**, § 87(2)(g)). The officers ejected the unidentified victim from the station. The incident did not result in any summonses or arrests.

The investigation obtained BWC footage (**BR 01, summarized in BR 02**) and MTA surveillance footage (**BR 03, summarized in BR 04**). All references to video refer to the timestamp in the video player and not to the on-screen timestamp.

Sgt. Reeder of the Transit Investigations Unit conducted a concurrent investigation, which resulted in the following substantiated allegations against PO Cherenfant: physical force, failure to notify a supervisor of force used, failure to prepare a TRI report, failure to prepare Transit Ejection Report, failure to safeguard AIDED property, and failure to prepare property clerk invoice. The case file for the investigation indicates that a Command Discipline B was issued, and PO Cherenfant’s Summary of Employment History indicates that he forfeited five vacation days (**BR 05; 06**).

As of March 1, 2023, PO Fayzimatova is no longer a member of the NYPD.

Findings and Recommendations

Allegation (A) Force: Police Officer Eroll Cherenfant used physical force against an individual.

Allegation (B) Discourtesy: Police Officer Eroll Cherenfant spoke discourteously to an individual.

The investigation was unable to identify the victim of these allegations and did not obtain testimony from any civilian witnesses.

PO Cherenfant’s BWC footage (**BR 12, at 10:58**) captures the unidentified victim standing on the subway platform and speaking with officers as they attempt to eject § 87(2)(b). PO Cherenfant tells the unidentified victim that he can observe the incident. At no point does he tell the unidentified victim to stand back or not to interfere. The officers escort § 87(2)(b) up the stairs to the mezzanine. MTA surveillance footage (**BR 03, file #118.66(1), at 07:16-07:40**) captures the unidentified victim following the officers on the mezzanine. He is walking towards them with a quick pace while unzipping his jacket. PO Cherenfant’s BWC footage (**BR 12, at 11:55**) captures PO Cherenfant turning around to meet the unidentified victim as he approaches the officers. The victim can be heard saying, “Yo, officers.” A clip of this portion of the footage, slowed to one-third speed and lacking audio, can be found at **BR 07**. The unidentified victim briefly touches his right palm to his midsection, and then holds his open hands down at waist-level. The victim’s eyes are closed. PO Cherenfant takes a few steps toward him and shoves him in the chest with both hands. The unidentified victim falls backward to the ground, hitting his shoulder and head against a metal column behind him. The victim’s eyes remain closed until after PO Cherenfant shoves him. While shoving the victim, PO Cherenfant says, “Back the fuck up. Get out of here.” Once the

victim falls to the ground, PO Cherenfant says, “Go. Leave. We’re not here to play games.” As PO Cherenfant begins to turn away, while the victim remains on the ground, PO Cherenfant again says, “Back the fuck up.” The victim gets up from the floor and tries to speak to PO Cherenfant. PO Cherenfant spins him around and pushes him away while telling him to leave. The victim stands and continues speaking. PO Cherenfant tells him that he interfered and interrupted a police investigation, and explains why the officers are taking § 87(2)(b). The victim remonstrates with PO Cherenfant and declares that PO Cherenfant assaulted him. PO Cherenfant then determines that the victim will also be ejected from the station. During the following 30 seconds, officers escort the victim past the turnstiles. The victim complies and walks toward the exit, but then stops and tries to continue speaking to PO Cherenfant. At 12:55, PO Cherenfant says, “You got about five seconds to get the fuck outta here or I’m gonna lock you up.” PO Cherenfant leaves to join the officers escorting § 87(2)(b) and the unidentified victim eventually leaves the subway station.

PO Cherenfant testified (**BR 08**) that he repeatedly told the unidentified victim not to interfere and to stay back while the officers apprehended § 87(2)(b) on the platform. The unidentified victim complied and stepped back. Once the officers reached the mezzanine, PO Cherenfant heard the unidentified victim shouting, “Fuck this, if you taking him, you gotta take me too!” The unidentified victim walked quickly toward the officers in what PO Cherenfant described as an aggressive manner. The victim leaned forward and had both arms down and wide at his hips, with his palms open. PO Cherenfant thought the victim was being aggressive and trying to interfere. He believed the victim was a threat because his hands were positioned in a manner where he could have reached for PO Cherenfant’s belt or attempted to strike him. PO Cherenfant noted that civilians have struck him in the past even when their hands were low. He also noted that he did not know if the victim had martial arts training. PO Cherenfant pushed the victim to create space for safety, as he needed to protect § 87(2)(b) and the other officers. He also feared losing control of § 87(2)(b). He did not push the victim particularly lightly or heavily. He did not expect the victim to fall to the ground and he was not trying to hurt him. PO Cherenfant confirmed that he said, “Get the fuck back,” as he pushed the victim. He explained that he did not issue any commands before resorting to using force because the unidentified victim was already aggressive and had ignored his prior orders not to interfere on the platform. He used profanity because he wanted to emphasize the seriousness of the order to the victim. With regard to his later use of profanity, when threatening to arrest the victim if he did not comply with the ejection, PO Cherenfant said he used profanity because the victim was still not cooperating, and he was trying to do everything he could to induce the victim to leave. PO Cherenfant acknowledged in the interview that he was wrong to use profanity in that instance.

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. Patrol Guide Procedure 221-02 (**BR 09**).

Under DAO-DCT 2017-17005, profane remarks made during stressful situations or while an officer is trying to get a chaotic situation under control are not misconduct (**BR 10**).

§ 87(2)(g)

PO Cherenfant instead immediately shoved the victim with such force that he fell to the ground and against a metal column. At the time PO Cherenfant used force, the victim’s eyes were closed, and his hands were open and down at his sides. § 87(2)(g)

Moreover, PO Cherenfant did not actually order the victim to move back until he was already shoving him, and thus he gave the victim no opportunity to comply with his order. PO Cherenfant’s testimony that he did not intend for the victim to fall to the ground § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The victim had not previously disobeyed any orders from PO Cherenfant on the platform, and PO Cherenfant immediately began using profanity and force before the victim had any chance to comply on the mezzanine. PO Cherenfant then continued using profanity and ordering the victim to “back up” even while the victim was lying on the ground; § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Cherenfant has been a member of the NYPD for nine years and has been a subject in four CCRB complaints and 17 allegations, of which two were substantiated:
 - 202003118 involved two substantiated allegations of threat of removal to hospital against PO Cherenfant. The Board recommended Charges and the NYPD has not yet imposed discipline.
 - § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of May 11, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**BR 11**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 5

Investigator:	<u>Mic Braun</u>	<u>Inv. Mic Braun</u>	<u>May 24, 2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>May 24, 2023</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date